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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,944	02/05/2004	John E. Kast	151P08970US02	5311
54228	7590	01/11/2010	EXAMINER	
IPLM GROUP, P.A. POST OFFICE BOX 18455 MINNEAPOLIS, MN 55418			OROPEZA, FRANCES P	
			ART UNIT	PAPER NUMBER
			3766	
			MAIL DATE	DELIVERY MODE
			01/11/2010 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/772,944

**Applicant(s)**

KAST ET AL.

**Examiner**

FRANCES P. OROPEZA

**Art Unit**

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/6/09 (Appeal Brief).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

**DETAILED ACTION**

***Response to Appeal Brief***

1. In view of the appeal brief filed on 10/6/09, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Carl H. Layno/

Supervisory Patent Examiner, Art Unit 3766.

***Affidavit***

2. The affidavit filed 10/6/09 appears to be the same affidavit filed 2/18/09.

The affidavit filed 2/18/09 was fully considered. A response to the 2/18/09 affidavit was provided in the non-final Office action of 6/1/09. This response has been reviewed and is deemed to be appropriate. The substance of the response is repeated below:

In the response filed 2/18/09 and 10/6/09, the applicant submitted an affidavit by Mr. John E. Kast indicating the efficiency of the charge transfer is optimized by positioning the primary recharging coil as concentrically as possible with the secondary recharging coil. While the examiner has fully considered Mr. Kast's findings and statements, it would seem if the placement of the recharging coil concentrically on a proximal face of the housing was critical or if it provided unexpected results, the importance of the coil location would have been discussed in the instant specification. In fact the instant specification states on page 2, lines 16-18 - "the recharging coil can with be carried on the proximal face... or detached... and located remotely". Given the instant specification does not discuss the criticality of the placement of the recharging coil centrally on the proximal face of the implanted device housing, and does not discuss any unexpected results that are derived from placing the recharging coil centrally on the proximal face of the implanted device housing, it is accepted the location of the coil can vary from a central location on the exterior face of the implanted device housing to a remote location with no defined location relative to the implanted device, this choice seen as a design choice.

***Claim Rejections - 35 USC § 102***

3. Claims 1-17 and 19-21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,154,677 to Leysieffer ("Leysieffer").

As related to claims 1 and 2, Leysieffer discloses the instant invention comprising an implantable medical device (54) adapted to be charged with an external recharging coil (106), the device comprising a housing (72) having an interior cavity, a proximal face (read to be the device housing wall (72) where the terminals (107) connect the recharge coil (106) with the electronics (72) – figure 1), and electrical feed-throughs, the hermetically sealed penetrations (108) read as electrical/ recharge feed-throughs (column 4, lines 56-60), the electronics carried in the housing interior cavity, the electronics configured to perform a medical therapy (74), a rechargeable power source (90) carried in the housing interior cavity and electrically coupled to the electronics; and, a recharging coil (106) electrically coupled through the housing electrical feed-through (108) to the electronics and rechargeable power source (90) (Figures 1 and 5; column 4, lines 14-60).

As relate to claims 3, 5, 8 and 10-13, the coil is connected mechanically tightly to the housing using polymer jacketing (104), read as the coil cover, and polymer over-molding, read as a means for attaching the recharge coil to the housing (column 4, lines 42-53; column 7, lines 20-23).

As related to claims 4, 6, 7 and 9, alignment details (poles) and attachment details are provided for the housing and coil cover (104) (column 4, lines 14-19).

As related to claims 14 and 15, the polymer jacketing is read as a retention sleeve that is hermetically sealed to the housing (column 6, lines 2-4; column 7, lines 20-23, 27-28).

As related to claims 16 and 17, the power source is a rechargeable electrochemical battery (column 4, lines 20-24).

As related to claim 19, the receiving coil can be used with the telemetry system (column 6, lines 51-57).

As related to claim 20, the implanted medical device is a pacemaker (column 2, lines 8-13).

***Claim Rejections - 35 USC § 103***

4. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,154,677 to Leysieffer ('Leysieffer') in view of U.S. Patent No. 5,190,034 to Sholder ("Sholder").

As discussed in paragraph 3 of this action, Leysieffer discloses the claimed invention except for locating a telemetry coil in the interior cavity of the housing.

Sholder teach an implantable device configuration using a telemetry circuit located in the interior cavity of the device for the purpose of transmitting data to the external telemetry receiver. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used a telemetry coil in the interior cavity of the device in the Leysieffer system to provide an alternate location for the telemetry coil so communications would never be interrupted with the need to recharge the power supply of the device, hence enabling prompt alerting when treatment is being undertaken by the implanted device (column 6, lines 12-21).

***Statutory Basis***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (571) 272-4953. Fran's schedule typically is Monday and Tuesday 9AM-7PM EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on (571) 272-4949. Carl's schedule typically is Monday, Wednesday, Friday 9AM-5PM EST; Tuesday, Thursday 9AM-3PM and 9PM-11PM EST. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communication and for After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Frances P. Oropeza/  
Patent Examiner, Art Unit 3766  
January 4, 2010

/Carl H. Layno/  
Supervisory Patent Examiner, Art Unit 3766